

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No.: 7,534,800: Graczyk et al.

Group Art Unit: 1626

Application No.: 10/509,128

Confirmation No.: 4053

Filed: July 28, 2005

Examiner: Loewe, Sun Jae Y.

Issue Date: May 19, 2009

For: Azaindoles as Inhibitors of C-JUN N-Terminal Kinases for Treatment of
Neurodegenerative Disorders

Attorney Docket No: 102286.154US1

Office of Petitions

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705**

Dear Sir:

This is in response to Decision on Request for Reconsideration of Patent Term Adjustment and Notice of Intent to Issue Certificate of Correction mailed on July 22, 2009 in connection with the above-referenced patent.

Patentee filed the Request for Reconsideration for the Patent Term Adjustment Under 37 C.F.R. § 1.705 for the patent identified above on May 21, 2009, and the Supplemental Request for Reconsideration for the Patent Term Adjustment Under 37 C.F.R. § 1.705 on June 5, 2009. The USPTO issued a Decision on July 22, 2009 which granted a revised patent term adjustment of 568 days.

Patentee believes that the patent is entitled to a total of 763 days of term adjustment, and hereby requests reconsideration of the patent term adjustment pursuant to 37 C.F.R. § 1.705(d) as follows.

Patentee believes the total patent term adjustment under 37 C.F.R. §§ 1.702-1.704 should be the total of:

(1) 164 days under 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1), as recognized in the Notice of Allowance, for the Patent Office delay in issuing a first office action 14 months after the filing date (195 days) minus any Applicants' delay (31 days); and

(2) 599 days under 37 C.F.R. §§ 1.702(b) and 1.703(b) for the Patent Office delay in issuing the patent after September 28, 2007 (three years from the filing date) until the actual issue date of the patent (May 19, 2009).

Periods (1) and (2) do not overlap under 37 C.F.R. § 1.703(f). *See Wyeth v. Dudas*, 88 U.S.P.Q.2d 1538 (D.D.C. 2008). Thus, the total adjustment based on (1) and (2) above should be 763 days. The Decision acknowledged that Patentee requested recalculation of PTA according to the court's interpretation of the overlap provision as set forth in *Wyeth*. However, the Decision set out legal arguments that had been considered and rejected by the court in *Wyeth*. Because the identical legal issue of the present PTA calculation has been decided by *Wyeth*, and, absent a reversal by the Federal Circuit or the Supreme Court, the USPTO should follow the *Wyeth* decision.

Accordingly, Patentee respectfully requests that the USPTO follow the law as set forth in the *Wyeth* decision and issue a total of 763 days for the patent term adjustment.

Patentee submitted the \$200.00 fee in accordance with 37 C.F.R. 1.18(e) along with the Application for Patent Term Adjustment and Request for Reconsideration for the Patent Term Adjustment Under 37 C.F.R. §§ 1.702-1.705 on February 18, 2009. Accordingly, no fee is believed to be due in connection with the present Response. However, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 08-0219.

Respectfully submitted,

Date: August 12, 2009

/Henry H. Gu/
Henry H. Gu
Reg. No. 55,227
Attorney for Applicant(s)

WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Tel.: (617) 526-6652
Fax: (617) 526-5000